

## **APPENDIX F**

### **FEDERAL PROCUREMENT REQUIREMENTS**

This Attachment discusses the procurement requirements that the Grantee must meet after the grant is awarded and the State CDBG contract has been executed. Please refer also to Chapter 8 in the CDBG Grant Management Manual at the following link: [CDBG Grant Management Manual Chapter 8](#)

#### **OPTIONS FOR IMPLEMENTATION**

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The Grantee may complete the work in-house, select a Subrecipient, or hire an outside entity (contractor) for any activity in the grant – general administrative activities, implementation of the activity, or provision of services. The type of activity may be a deciding factor in how the jurisdiction will decide upon the division of labor.

The federal procurement requirements will apply if the Grantee chooses to procure a contractor to carry out all or part of the activity paid for in whole or in part with CDBG funds. Procurement requirements will not apply if the Grantee uses a Subrecipient to perform (or provide) the activity. See Chapter 2 of the State CDBG Grant Management Manual for a sample Subrecipient agreement.

#### **STARTING THE ACTIVITY**

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In-house Work: If the Grantee will use only its own staff to work on the grant, incurring costs may begin upon execution of the contract. If the Grantee wants to begin to incur costs after the award of funds but prior to the execution of the contract, they may request in writing permission from Department staff to incur costs early. Department staff will provide a written approval and the Grantee may begin incurring costs. Upon execution of the contract, Grantee may draw down grant funds.

Consultant Work: If the Grantee procures an outside consultant or agency to provide services, the Grantee must go through the proper federal procurement process. See different procurement standards required (described in the next section below) based on cost for services and type of service being procured.

Subrecipient Work: If the Grantee uses a non-profit Subrecipient, no procurement is needed but a valid Subrecipient agreement must be executed and made available for Department review prior to drawing down funds to pay the Subrecipient. See Chapter 2 of the CDBG Grant Management Manual.

## DOCUMENTATION REQUIRED FOR CDBG GRANTS

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Grantees that procure consultant services **paid for** with CDBG grant funds are required to submit documentation of the procurement process as a Special Condition of the contract, and this documentation must be approved by the Department prior to drawing down grant funds. The ability to incur costs prior to execution of the grant contract must be approved in writing by the Department, and will be at the jurisdiction's risk. The required documentation should consist of a narrative description of the procurement outreach process, documentation of outreach (media used, copies of ads or public notices, websites, mailing lists, clearinghouses used, locations of public postings, etc.), list of the proposals received with dollar amounts, and the criteria, method and reason for selection of the contractor or consultant. Also include a copy of the Request for Proposal (RFP) and/or Request for Qualification (RFQ) used to procure the contractor or consultant. Some jurisdictions have a policy of opening bids for all activities at a public meeting to ensure transparency (it is required under the sealed bid process as described below). If this is done, include the minutes of the public meeting.

**Note:** *If the applicant jurisdiction has a third-party consultant prepare the RFP/RFQ used in the procurement process, **that third-party consultant is precluded from bidding on the RFP/RFQ.***

## HIRING A CONSULTANT OR CONTRACTOR

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The Grantee has several options:

- Small Purchase process;
- Request for Proposals (includes both RFP's and RFQ's);
- Non-competitive procedures (Sole Source or Single Source); or,
- Using a contractor already under contract with the jurisdiction.

**Note:** *No loss leader arrangements are allowed. The intent of federal regulations is to ensure maximum open and free competition. Any loss leader type of arrangement where a consultant offers to provide free services before an applicant receives a grant in return for a future contract is **prohibited** by federal regulations. **Any jurisdiction found to be involved in a loss leader type of arrangement, even after close-out of the grant, will be required to return all funds paid to that contractor(s), and depending on circumstances, may be required to return all grant funds to the State.***

## SMALL PURCHASE PROCESS

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In order to qualify for the small purchase procurement process, the total cost of the scope of services (also known as scope of work) being procured from all funding sources must be less than \$100,000 (the federal threshold amount for a small purchase procurement),. If the total cost of the project exceeds \$100,000, the Grantee may not use the small purchase method.

If the small purchase method is selected, the Grantee may follow the more stringent of either its own local procurement rules or the federal procurement requirement. Once a choice has been made, the grantee's public information file must contain the basis for the determination of the method of procurement.

Price or rate quotations must be obtained from a sufficient number (at least three) of qualified vendors. These quotes may be obtained over the telephone or in writing. The jurisdiction should provide the same information on the scope of work to be performed to all bidders, document the file with the bid information received from all vendors, and the basis for selection. If only one response is received, the Grantee must contact State CDBG staff for written permission to select this contractor or consultant using the sole source process. See below under Non-Competitive Proposals (Sole Source) for more information.

#### **COMPETITIVE PROPOSAL: REQUEST FOR PROPOSALS (RFP)** (in accordance with 24 CFR 85.36(d)(3))

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1. The RFP must clearly and accurately state the technical requirements for the goods and services required;
2. The Grantee must (widely) publicize the RFP, and to the maximum extent practicable, honor reasonable requests by parties to have an opportunity to compete;
3. Proposals must be solicited from an adequate number of qualified sources, consistent with the nature and requirements of the procurement. If only one proposal is received, the Grantee must write the state and request approval of single source procurement;
4. The Grantee must conduct a technical evaluation of the submitted proposals to identify the responsible firms;
5. As necessary, the Grantee must conduct negotiations with those firms who are deemed responsive and responsible and fall within a competitive price range, based on the Grantee's evaluation of the bidders' pricing and technical proposals. After negotiations, these bidders may be given the opportunity to submit a best and final offer; and,
6. The Grantee must award the contract to the most responsive and responsible offer, after price and other factors are considered through scoring the proposals for best and final offers according to the Grantee's predetermined evaluation criteria. The successful proposal/offer must clearly be the most advantageous source of the goods and services.

## **COMPETITIVE PROPOSAL: REQUEST FOR QUALIFICATIONS (RFQ) (in accordance with 24 CFR 85.36(d)(3))**

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For procurement involving architecture or engineering (A/E) services, the Grantee may use the Request for Qualifications (RFQ) competitive proposal procedure whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. In these instances, price is not used as a selection factor. This qualifications-based procurement process can be used only for A/E services.

Once the most-qualified firm is identified, only that firm is asked for a price proposal. The proposed price is subject to negotiation. If negotiations with the selected firm are unsuccessful, this process is repeated with the next highest-ranked firm, until a fair and reasonably-priced contract can be awarded.

The Grantee must take care to document the basis for its determination of the most qualified competitor and the reasonableness of the contract price. This qualifications-based approach to the competitive proposals method may not be used to purchase other than architectural and engineering services (24 CFR 85.36(d)(3)(v)).

For applicants' information, the above-cited federal rule relating to the procurement of architectural and engineering (A/E) services is quoted verbatim:

*"Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort. If only one proposal is received, the Grantee must write the state and request approval of single source procurement."*

## **SPECIAL NOTES REGARDING THE RFQ PROCESS**

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1. An RFQ cannot be used to purchase other types of services, even though A/E firms are potential sources to perform other types of services. For example, if an A/E firm is procured through the RFQ process to provide A/E plans, and you also want to engage a consultant firm to be the general administrative contractor for the grant, you must employ the RFP procurement process to procure the consultant for the administrative services, even it ends up being the same A/E firm that is doing the A/E plans.
2. Federal procurement regulations generally discourage the use of local geographical preferences in the evaluation of bids or proposals except where mandated by federal statutes, due to the restrictions on open competition which result from such

preferences. However, in procuring architectural and engineering services, geographic location is permitted as one of the selection criteria provided this criterion leaves an appropriate number of qualified firms (24 CFR 85.36(c)(2)).

If only one response is received, the Grantee must contact State CDBG staff for permission to select this sole source. See below under Non-Competitive Proposals (Sole Source) for more information.

## **SEALED BID PROCUREMENT PROCESS**

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Competitive Sealed Bid [24 CFR 85.36 (d)(2)]: The competitive sealed bid is the preferred method for procuring construction services. This method must lend itself to a firm, fixed price contract (lump sum or unit price) where the selection can be made principally on the basis of price.

1. The grantee must advertise the Invitation for Bid (IFB) in publications of general circulation;
2. The IFB must include complete and accurate specifications and pertinent attachments, and clearly define items or services needed, in sufficient detail for the bidders to properly respond;
3. Bids must be opened publicly at the time and place stated in the IFB;
4. The grantee must receive at least two or more responsible bids for each procurement transaction; and,
5. If awarded, the contract must be given to the lowest responsive and responsible bidder. The grantee can, however, decide not to make the award to any of the bidders.

If you have questions, please contact the General or ED representative assigned to your jurisdiction.

## **NON-COMPETITIVE PROCUREMENT PROCESS: SOLE SOURCE**

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Procurement by Sole Source method means procurement through solicitation of a proposal from only one source. Grantee must provide documentation that there are no other service providers in the area who could perform the activity.

This method can only be used when awarding a contract is not feasible using the competitive proposal or small purchase method, and one of the following circumstances applies:

1. The service is available only from a single source; or,
2. There is an emergency situation or extremely urgent need and time will not allow other procurement methods; or,

3. The Grantee attempted procurement through the RFP or Small Purchase process and received only one bid.

The Grantee must submit a written request to the Department prior to selecting a sole source bidder. The written request must address why this procurement activity meets the criteria given above. Before making such a request, the Grantee should contact a State CDBG representative to obtain the correct format.

Sole Source procurement can also happen after solicitation of a number of sources (i.e., by using the RFP, RFQ, or small purchase method) and competition is determined to be inadequate.

If a Grantee has attempted procurement by the RFP or Small Purchase methods and these methods resulted in only one bid received, the Grantee must submit a written request to the Department prior to selecting a single bidder. The written request must include documentation of outreach to document that broad outreach efforts were made.

## **USING CONSULTANTS ALREADY UNDER CONTRACT**

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If the jurisdiction has a consultant under a pre-existing, multi-year contract, the State CDBG program will permit the Grantee to use that consultant without going through an additional procurement process, as long as the Grantee can provide documentation that the proper procurement process was followed. There are also some restrictions:

A single RFP for CDBG administrative services including housing, public works, community facilities and public services, and economic development is not consistent with the federal procurement requirement, and therefore is not permitted. That is, an RFP of such broad scope would place unreasonable requirements on firms in order for them to qualify to do business. Therefore, the Department restricts multi-year contracting to specific specialty areas (that is, a limited number of specific activities). A single RFP to carry out all CDBG housing-related activities or all CDBG economic development-related activities would be acceptable. A single RFP to carry out all CDBG general administrative duties plus all housing-related activities plus a large infrastructure project within the same grant is not acceptable, and the jurisdiction will be required to re-procure for the entire grant. Contracts between a jurisdiction and consultant cannot exceed three years. Please see the CDBG Grant Management Manual for additional requirements for the contract.